

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
W.M., Appellant)	
)	
and)	Docket No. 22-0521
)	Issued: March 1, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Bellmawr, NJ, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 14, 2022 appellant filed a timely appeal from an August 26, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from the last merit decision of OWCP on this issue dated April 27, 2021, to the filing of

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because, due to COVID-19, he was in no condition due to timely fill out the required paperwork to be entitled to continuation of pay (COP). The Board, in exercising its discretion, denies appellant's request for oral argument because the Board does not have jurisdiction over the merits of this case and, thus, the arguments on appeal can a dequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

this appeal, pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.³

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b)(1).

FACTUAL HISTORY

On February 17, 2021 appellant, then a 54-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that during the "week of January 11" he contracted COVID-19 while in the performance of duty. He noted that he was hospitalized from January 25 through February 7, 2021 and spent additional time recovering at home on oxygen. A second Form CA-1 filed on February 18, 2021 noted the date of injury as January 11, 2021 and indicated that appellant had stopped work on January 19, 2021.

On April 27, 2021 OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied his claim for continuation of pay (COP), finding that he failed to report the January 11, 2021 employment injury on a form approved by OWCP within 30 days, as required.

On May 14, 2021 appellant requested reconsideration of the April 27, 2021 COP decision.

By decision dated May 21, 2021, OWCP denied the request for reconsideration of the merits of the claim for COP.

On August 6, 2021 appellant requested an oral hearing regarding the April 27, 2021 COP decision before a representative of OWCP's Branch of Hearings and Review. Numerous medical reports were submitted.

By decision dated August 26, 2021, OWCP denied appellant's August 6, 2021 hearing request pursuant to 5 U.S.C. § 8124(b)(1), as he had previously requested reconsideration and the reconsideration decision was issued on May 21, 2021. It further exercised its discretion and determined that the issue in this case could equally well be addressed by another request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the August 26, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier’s date marking and before the claimant has requested reconsideration.⁶ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant’s request for an oral hearing, pursuant to 5 U.S.C. § 8124(b)(1).

Appellant had previously requested reconsideration and OWCP had issued its reconsideration decision on May 21, 2021.⁸ He was, therefore, not entitled to an oral hearing as a matter of right.⁹

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.¹⁰ The Board finds that, in the August 26, 2021 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence.

The Board has held that the only limitation on OWCP’s authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.¹¹ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant’s request for an oral hearing. Accordingly, the Board finds that OWCP properly denied his request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617.

⁶ *Id.* at § 10.616(a).

⁷ *See D.S.*, Docket No. 21-1296 (issued March 23, 2022); *J.D.*, Docket No. 15-1679 (issued December 14, 2015); *D.M.*, Docket No. 08-1814 (issued January 16, 2009).

⁸ *See R.S.*, Docket No. 10-672 (issued September 24, 2010).

⁹ *See supra* note 7; *R.S.*, *id.*

¹⁰ *R.S.*, *id.*

¹¹ *Id.*

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b)(1).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board